



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0033]

Notice of Intent to Grant a Buy America Waiver to Palmetto Railways, a division of the South Carolina Department of Commerce, to Use Wide-Span, Electric, Rail-Mounted Gantry Cranes

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public it intends to grant Palmetto Railways a waiver from FRA's Buy America requirement to use four (4) wide-span, electric, rail-mounted gantry cranes (WSCs).

DATES: Written comments on FRA's determination to grant Palmetto's Buy America waiver request should be provided to the FRA on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>. Commenters should follow the instructions below for mailed and hand-delivered comments:

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must reference the “Federal Railroad Administration” and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting responses to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue, SE, Mail Stop 10, Washington, DC 20590, (202) 493-0078, John.Johnson@dot.gov.

SUPPLEMENTARY INFORMATION:

FRA provides information on its reasons for granting this waiver in a letter to Palmetto Railways, quoted below:

Jeffrey M. McWhorter
President & CEO
Palmetto Railways
540 East Bay Street
Charleston, SC 29403

Re: Request for Waiver of Buy America Requirement for Wide-Span, Electric, Rail-Mounted Gantry Cranes

Dear Mr. McWhorter:

This letter is in response to your request that the Federal Railroad Administration (FRA) grant Palmetto Railways (Palmetto), a division of the South Carolina Department of Commerce, a waiver from FRA's Buy America policy applicable to FRA's Railroad Rehabilitation & Improvement Financing (RRIF) loan program. Palmetto requests a waiver to purchase four (4) wide-span, electric, rail-mounted gantry cranes (WSCs) because no company manufactures WSCs in the United States. Palmetto plans to use the WSCs at a brand new Intermodal Container Transfer Facility (ICTF) on the site of the former Charleston Navy Base, located in the City of North Charleston, South Carolina. The total estimated cost of the WSCs is \$[] or 8.2 percent of the total investment of approximately \$[] to construct the ICTF.

For the reasons set forth below, FRA is granting Palmetto's waiver request.

FRA applies 49 U.S.C. § 24405(a)(1) to RRIF loans. Section 24405(a)(1) requires that the steel, iron, and manufactured goods used in a project be produced in the United States. FRA may waive the Buy America requirements if FRA finds that: (A) applying the requirements would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

FRA concludes a waiver is appropriate because domestically-produced WSCs meeting Palmetto's specification for the ICTF project are not currently produced in the United States.

FRA bases this determination on the following:

- While there are domestic manufacturers for smaller, intermodal cranes, there are no U.S. manufacturers of large and wide-span intermodal cranes for ports;
- In 2011, U.S. Department of Transportation's Maritime Administration (MARAD) determined it had been fifteen years since mobile harbor cranes were manufactured in the United States and issued a waiver for foreign mobile harbor cranes. See 76 FR 14457 (March 16, 2011). This finding comports with previous waivers for cranes granted by MARAD in 2010 and the Federal

Highway Administration (FHWA) in 2009. See 75 FR 68661 (November 8, 2010) and 74 FR 51363 (October 6, 2009), respectively;

- In 2013, the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (NIST-MEP) scouted for domestic rail-mounted and rubber tire mobile harbor cranes for intermodal containers and did not locate any U.S. manufacturers;
- In 2015, NIST-MEP scouted for domestic large, container vessel ship-to-shore gantry cranes and did not locate any U.S. manufacturers currently manufacturing these cranes;
- In 2015, Palmetto conducted extensive market research about active WSC manufacturers and found that they do not manufacture WSCs in the United States;
- In January 2015, FHWA granted a Buy America waiver for non-domestic harbor cranes after concluding that there are no domestic manufacturers. See 80 FR 3005 (January 21, 2015);
- On February 9, 2015, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its website. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through "GovDelivery." See <https://www.fra.dot.gov/Page/P0783>. FRA received no comments;
- In May 2015, FHWA granted another Buy America waiver for cargo cranes after concluding that there are no domestic manufacturers. See 80 FR 29790 (May 22, 2015); and
- In January 2016, FRA independently confirmed there are no domestic WSC manufacturers. FRA discussed the U.S. market with crane/intermodal experts from several port terminals and railroad intermodal operations with experience purchasing a variety of crane equipment, including WSC cranes.

FRA encourages Palmetto to follow through with the bidding process described in its waiver request, including Palmetto's expectation to weight "the ability of a supplier to offer a technically compliant, cost-effective solution that maximizes U.S.-origin content over the lifecycle of the WSCs." FRA is publishing notice of its decision to grant Palmetto's waiver request in the *Federal Register* to provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the WSCs for Palmetto's procurement as identified in its waiver request.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at John.Johnson@dot.gov or (202) 493-0078.

Sincerely,

Sarah E. Feinberg
Administrator

Issued in Washington, DC on June 16, 2016.

Amitabha Bose,
Chief Counsel.

[FR Doc. 2016-14708 Filed: 6/21/2016 8:45 am; Publication Date: 6/22/2016]